

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Sher Analyst: Darrine Distefano Bill Number: SB 2027
Related Bills: See Legislative History Telephone: 845-6458 Introduced Date: 02-25-2000
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Public Record Disclosure/Written Requests/State Agencies Determination if Disclosable/Allows Court to Impose Fine if Agency Acted in Bad Faith

SUMMARY

This bill would amend the California Public Records Act to require that state agencies justify the withholding of any record by:

- Ⓟ requiring written determinations that a record is exempt from disclosure or the public interest is served by not making the record public,
- Ⓟ establishing a procedure to allow any person to appeal to the Attorney General (AG) if a state or local agency denies access to a public record or subverts the intent of the bill by actions short of denial of inspection, and
- Ⓟ providing that the court may award a plaintiff an amount not less than \$100 for each day, up to a maximum of \$10,000, that the agency denied the right of the plaintiff to inspect the record.

EFFECTIVE DATE

This bill would be effective January 1, 2001, and specifies an operative date of July 1, 2001.

LEGISLATIVE HISTORY

SB 48 (99/00), which was identical to SB 2027, was vetoed by the Governor.

AB 2799 (99/00), introduced in the Assembly February 28, 2000, would require a public record to be disclosed if, on the facts of the particular case brought in an action, the public interest is served by disclosing the record.

SB 74 (97/98), SB 323 (95/96), and SB 95 (93/94) suggested a variety of changes to the Public Records Act. SB 95 became a property tax bill; all three bills were vetoed.

SPECIFIC FINDINGS

Currently, the California Public Records Act (the Act) requires that all state and local agencies make their public records available for public inspection during office hours, except as exempted by law. This act further requires that if a state agency withholds any public record, it must demonstrate that 1) the record was exempt from disclosure or 2) the public interest for nondisclosure outweighed the public interest for disclosure.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ <u>X</u> PENDING

Department Director

Date

Gerald H. Goldberg

4/17/00

The Act requires each agency, upon a request for a copy of records, within 10 days from receipt of the request, to determine whether the request, in whole or in part, seeks disclosable public records. In unusual circumstances the 10 day time limit may be extended by providing the requestor written notice, explaining the reasons for the extension and the date on which a determination is expected to be dispatched.

The Act allows any person to institute a court proceeding to enforce his or her right to obtain copies of public records. The Act allows a judge to set time frames with the objective of securing an early decision. If a judge finds that the record was properly withheld from disclosure, the judge shall return the record to the agency without disclosure. This decision may be appealed to the appellate court.

The Act requires a successful plaintiff to be awarded court costs and reasonable attorney fees. However, if the plaintiff's case is found to be frivolous, the court must award costs and fees to the public agency.

This bill would require that written requests for inspection of public records be addressed to the head of each public agency. In the case of a multi-member board, such as the Franchise Tax Board, the request would be submitted to the executive officer.

This bill would require that a state agency explain in writing a decision to withhold any record as exempt from disclosure or because the public interest is best served by withholding from disclosure.

This bill would establish a procedure to allow any person to appeal to the attorney general if a state or local agency denies access to a public record. The appeal must be filed within 20 days after the person receives the agency's written denial. In the case of no agency response, AG review may be sought no less than 20 days and no more than 40 days after the request was delivered or mailed. The AG would issue a written decision within 20 days after receiving the appeal on whether the agency violated the Public Records Act. The bill provides the AG the ability to expand the 20-day period to issue a written decision by an additional 30 working days if the AG needs to obtain additional documentation, obtain copies, conduct extensive research, or if there is an unmanageable increase in the number of appeals received by the AG.

Under this procedure, the burden of proof in sustaining the agency action would rest on the government agency. The AG may request additional documentation from the agency and may request a copy of the records in question. If the AG finds in the appellant's favor, the AG shall order the agency to make the record public and may fine the agency not less than \$100 for each day access was denied. The AG's decision may be appealed within 15 days.

This bill would alternatively allow a person to file an action in court regarding the disclosure of a requested record before the administrative remedies described above have been exhausted with the AG.

Also, **this bill** would provide that a superior court may award a plaintiff an amount not less than \$100 for each day, up to a maximum of \$10,000, that the agency denied the right of the plaintiff to inspect the record, if the court determines that the agency acted in bad faith or had knowledge that the request sought nonexempt records.

This bill would not apply to a request for public records made to a state agency by a party to a pending proceeding involving the state agency or an employee of the agency or to a pending investigation by the agency, if the AG has or is providing legal advice or representation to the state agency with regard to the related proceeding or investigation.

In addition, this bill would make nonsubstantive technical changes to the Act.

Implementation Considerations

Implementing this bill would not significantly impact the department's programs and operations.

FISCAL IMPACT

Departmental Costs

Because this bill authorizes a new administrative review by the Attorney General, it could increase the department's costs related to disclosure. However, this increase is expected to be minor and too speculative to quantify.

Tax Revenue Estimate

This bill would not impact the state's income tax revenues.

BOARD POSITION

Pending.